

Paper No. 7

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In re Application of
Moran et al
Application No. 09/737,234
Filed: December 14, 2000
Attorney Docket No. 12598.0128.NPUS00
(SOLU:128)

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS
DECISION DISMISSING
PETITION

This is a decision on the petition, filed on March 22, 2001, in effect requesting that the Notice of Missing Parts ("Notice"), mailed on February 5, 2001 for the above-identified application, be partially withdrawn to the extent that it refers to an omitted Figure 6.

The petition is **DISMISSED**.

The application was filed on December 14, 2000. However, on February 5, 2001, the Initial Patent Examination Division of the Office mailed the Notice stating that a filing date had been accorded, and advising Applicants that Figure 6 described in the Specification appeared to have been omitted from the filed application. The Notice further states that the application, as filed, was missing the basic filing fee, the extra claims fee, and an oath or declaration.

In response, the present petition was filed. Petitioners assert that 6 sheets of drawings were filed on December 14, 2000 along with the remainder of the application. In support, the petition is accompanied by a copy of Petitioners' postcard receipt which acknowledges receipt in the Office of the application as well as 6 sheets of drawings on December 14, 2000. The application is identified on the postcard receipt by Attorney Firm File No. 12598.0128.NPUS00. In addition, the petition contains "copies" of 6 sheets of drawings allegedly filed on December 14, 2000, including a "Figure 6."

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO. See MPEP 503. The *prima facie* showing established by a postcard receipt is, of course, rebuttable and findings of fact in each case must be based on a consideration of all of the evidence in the official file.

A review of the papers filed on December 14, 2000, which are present in the official file, shows that Petitioners actually filed 3 sets of drawings on December 14, 2000.¹ Each of the sets is identical and comprises 5 sheets or pages containing Figures 1-4, 5A, 5B, 7 and 8. Thus, the official file shows that a total of 15 sheets was filed on December 14, 2000. Petitioners' postcard receipt is *prima facie* evidence of receipt of at least 6 sheets. The file shows that 15 sheets were actually received. None of the sheets received includes a Figure 6, i.e., all 3 sets of drawings filed on December 14, 2000 omitted Figure 6. It is also noteworthy that each set of drawings filed on December 14, 2000 includes Figures 5A and 5B on "Page 4 of 6 Pages," while the set of drawings supplied with the petition includes Figures 5A and 5B on "Page 3 of 6 Pages" and Figure 6 on "Page 4 of 6 Pages."² Obviously, only the front of original page 3 and the back of original page 4 were copied when the 3 sets of drawings filed on December 14, 2000 were prepared in counsel's office. Based on all of the evidence available in the file, it is concluded that the drawing of Figure 6 was omitted on December 14, 2000.

Accordingly, the Notice mailed February 5, 2001 was correct and will not be withdrawn. The petition fee will not be refunded.

An amendment renumbering the figures of drawings filed on December 14, 2000, in consecutive order and conforming the brief and detail descriptions of the drawings to the drawings actually filed on December 14, 2000, should be filed prior to the first Office action in order to avoid delay in the prosecution of the application.

In addition, the Office acknowledges receipt of a Declaration, a Preliminary Amendment, an Assignment (submitted on June 27, 2001 by facsimile), and a Power of Attorney by the Assignee. The Power of Attorney has been entered and made of record. The correspondence address for this application has been changed as requested in this Power of Attorney. The Assignment has been forwarded to the Assignment Branch for recordation.

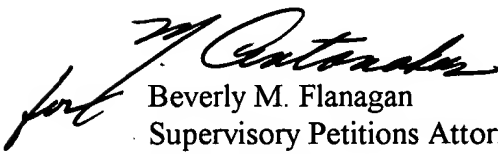
The \$710 basic filing fee, the \$144 for 8 claims in excess of 20, the \$400 for 5 independent claims in excess of 3, the \$130 surcharge for late-filing of the Declaration, and the \$40 for recording the Assignment, totaling \$1,424, have been charged to Deposit Account No. 01-2508 as authorized in the present petition.

¹ Petitioner's postcard receipt fails to mention that the application papers included 6 sheets of drawings (in triplicate).

² The page numbers are on the back of the drawings.

The application is being returned to the Initial Patent Examination Division for further processing with a filing date of December 14, 2000, using 5 sheets of drawings containing Figures 1-4, 5A, 5B, 7 and 8 filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.

A handwritten signature in cursive script, appearing to read "B. Flanagan", is written over the printed name.

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for Patent Examination Policy